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FACT FINDING PROCEEDINGS  
PURSUANT TO MEYERS-MILIAS BROWN ACT

In the matter of a controversy between

**COUNTY OF PLACER,**

Employer,  
and

**PLACER COUNTY DEPUTY  
SHERIFFS' ASSOCIATION,**

Union,

Re: Successor to 2015-2018 MOU.

**REPORT OF FACTFINDING  
PANEL AFTER HEARING**  
*Case No. SA-IM-220-M*

Chairperson: Catherine Harris, Esq.  
Arbitrator • Mediator  
Sacramento, California

Union Panelmember  
Sgt. Jason Farren  
Placer County Sheriffs  
Auburn, California

Employer Panelmember  
Jane Christenson  
Assistant County Executive  
Auburn, California

For the Union: David E. Mastagni, Esq.  
Tashayla D. Billington, Esq.  
Mastagni Holstedt, APC  
Sacramento, CA

For the County: Che I. Johnson, Esq.  
Liebert Cassidy Whitmore  
Sacramento, California

**REPORT OF THE FACTFINDING PANEL**

**Background**

This factfinding arises out of an impasse in negotiations involving an assortment of economic and non-economic issues. Negotiations for a successor agreement to the 2015-2018 MOU began on June 24, 2019. As of August 27, 2020, the parties had met for negotiations on nine occasions culminating in a last best and final offer (LBFO) from the County on July 21, 2020. The County has characterized the LBFO, which increased base

1 salary by 7% and reduced POST incentive pay by 7%, as an offer designed to minimize the  
2 adverse impact on the compensation of current employees while achieving long-term cost  
3 savings for the County. This offer was rejected by the Union based in large part on the  
4 Union's concerns that its membership would not approve any inroads into the continuing  
5 viability of Measure F (a local salary ordinance), as well as a concern that payment of base  
6 salary over and above what Measure F calls for might result in a challenge by taxpayer  
7 groups.

8         On August 27, 2020, the County declared impasse and requested an impasse  
9 meeting. On August 31, 2020, the Union informed the County that it was the Union's  
10 position that the LBFO contained several illegal terms making it improper to declare  
11 impasse.<sup>1</sup> On October 20, 2020, the County verbally notified the Union that it was  
12 withdrawing the LBFO and seeking to resume bargaining with the Union based on what the  
13 County has described as "significant steps to modify its proposals" during the course of a  
14 confidential mediation. The following day, on October 21, 2020, the Union filed its request  
15 for factfinding. The Union then declined a request by the County to hold factfinding in  
16 abeyance. After considering the positions of both parties, PERB made an administrative  
17 determination that the Union had met the procedural requirements to trigger factfinding. As  
18 reflected in PERB's Administrative Determination dated October 27, 2020, PERB made no  
19 determination of impasse. Since that time, the parties have continued their negotiations  
20 while also preparing for this factfinding.<sup>2</sup>

21         The positions of the parties appear to have hardened after the County notified the  
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23         <sup>1</sup> The Union claims that the County drove the negotiations to impasse by unlawfully  
24 insisting that the Union bargain over permissive subjects. This allegation is part of a pending unfair  
25 labor practice charge filed by the Union. By the time of the factfinding hearing, the County had also  
26 charged the Union with conduct amounting to an unfair labor practice. As further explained herein,  
27 the panel recommends that these charges and countercharges be dismissed as part of an overall  
28 settlement of the contract.

<sup>2</sup> On November 24, 2020, the parties agreed to waive statutory timelines to complete the  
instant factfinding.

1 Union on February 11, 2021 of its intent to officially repeal Measure F and offered the  
2 Union an opportunity to meet and confer over any foreseeable effects its decision may have  
3 on matters within the scope of representation. The County informed the Union, in writing,  
4 that it did not intend to take any action to implement any decision prior to conclusion of  
5 negotiations on this subject; however, the issue of the viability of the Measure F formula,  
6 applied annually to members of the bargaining unit (irrespective of what is required by the  
7 terms of the bargaining agreement), has remained the single biggest obstacle to reaching  
8 agreement.

### 9 **The Statutory Factors**

10 Under the MMBA, the sole responsibility of the panel is to make findings of fact and  
11 recommend the terms of a settlement of the parties' contract dispute in conformity with the  
12 statutory factors set forth in the Meyers-Milias Brown Act (MMBA).<sup>3</sup> Government Code  
13 section 3505.4 sets forth the following factfinding criteria to be considered as part of this  
14 impasse resolution procedure:

- 15 (1) State and federal laws that are applicable to the employer.
- 16 (2) Local rules, regulations, or ordinances.
- 17 (3) Stipulations of the parties.
- 18 (4) The interests and welfare of the public and financial ability of the public  
19 agency.
- 20 (5) Comparison of the wages, hours, and conditions of employment of the  
21 employees involved in the factfinding proceeding with the wages, hours and  
conditions of employment of other employees performing similar services in  
comparable public agencies.
- 22 (6) The consumer price index for goods and services, commonly known as the  
23 cost of living.
- 24 (7) The overall compensation presently received by the employees, including  
25 direct wage compensation, vacations, holidays, and other excused time,  
insurance and pensions, medical and hospitalization benefits, the continuity

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26 <sup>3</sup> Government Code section 3505.5 (a) directs the panel to make advisory findings of fact  
27 and to recommend terms of settlement. The panel has examined the record in light of all of the  
28 statutory factors while focusing on those factors which are most relevant to the determination of  
each of the disputed issues.

1 and stability of employment, and all other benefits received.

- 2 (8) Any other facts, not confined to those specified in paragraphs (1) through (7),  
3 inclusive, which are normally or traditionally taken into consideration in  
making the findings and recommendations.

4 The statute clearly provides that the above-listed factors must be considered by factfinders in  
5 arriving at their findings and recommendations but, beyond that, provides no guidance.<sup>4</sup> The  
6 MMBA does not rank the factors in the order of their importance nor does it restrict the  
7 factfinding panel to choosing between competing proposals.

### 8 **The Factfinding Hearing**

9 An evidentiary hearing was held on March 8 and 9, 2021 at Auburn, California. By  
10 agreement of the parties, the proceedings were transcribed by a certified shorthand reporter  
11 and copies of the transcript were provided to the factfinding panel and the parties. At the  
12 hearing, the parties were afforded a full opportunity to present testimonial<sup>5</sup> and  
13 documentary<sup>6</sup> evidence, to cross-examine each other's witnesses and to make argument to  
14 the factfinding panel. All post-hearing briefs had been received by the panel as of April 14,  
15 2021 at which time the panel began its deliberations.

16 During the course of the deliberations, i.e., on May 14, 2021, the panel received a  
17 joint request from the County and the Union asking the panel to address the issue of  
18 Measure F as long as, in doing so, consideration of this issue would not unduly prolong the  
19 proceeding. On May 20, 2021, the panel agreed to respond to the request. The panel's

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21 <sup>4</sup> In its presentation at the hearing, the County identifies factors (4), (5), (6) and (7) as the  
22 relevant factors for purposes of this factfinding. The Union identifies the same factors and adds  
23 factor (3), i.e., arguing that the 44-year history of adopting the local ordinance as part of the contract  
24 is an implied stipulation of the parties and that, as such, it should be afforded some deference. The  
Union also implicates factors (1) and (2) when it argues that the County's salary proposal is illegal  
under both the MMBA and the local ordinance.

25 <sup>5</sup> The County presented the testimony of Daniel Chatigny and Kate Sampson. The Union  
26 presented the testimony of Robert Brownstein, Mark Schniepp, Edward Bonner, Devon Bell,  
Morgan Gire, Jeff Swearingen, Mark Salvo, and Noah Frederito.

27 <sup>6</sup> During the course of the hearing, the panel received the following documents into  
28 evidence: Joint Exhibits "1" through "28," County Exhibits "1" through "13" and Union Exhibits "1"  
through "60."

1 agreement to confront the Measure F issue head on and to make a recommendation as to  
2 how the issue should be resolved resulted in multiple deliberation sessions.

### 3 **Evidence Regarding the Financial Condition of the County**

4 In addressing statutory factor (4) [the interests and welfare of the public and financial  
5 ability of the public agency], the County presented evidence that it is projecting what it  
6 describes as “significant fiscal challenges” in the next five to ten years due to escalating  
7 costs associated with the Measure F formula. With regard to the County’s operating funds,  
8 salary and benefits are the largest single category of expense (36%). Public protection is  
9 also the largest portion of the operating and capital funds expenditures by service systems.  
10 In its presentation, the County highlights the fact that per capita operating costs for public  
11 protection have increased significantly since 1977 (the year that Measure F was enacted),  
12 and most dramatically in the past five years, when compared to other expenditures.

13 The County projects negative ending fund balances for the Public Safety Fund  
14 beginning in 2025 (\$2 million) and increasing with each passing year as follows: 2026 (\$6.5  
15 million), 2027 (\$9 million), 2028 (\$11.7 million), 2029 (\$14.8 million) and 2030 (\$18.6  
16 million). While acknowledging that the General Fund is projected to grow, the County  
17 also projects that these increases will be absorbed by the Public Safety Fund, i.e., likely  
18 resulting in a negative General Fund balance by 2025. At this point, according to Finance  
19 and Budget Operations Director Daniel Chatigny, the County will be forced to either reduce  
20 costs (through layoffs) or cut services to the general public.

21 The Union challenges this interpretation of the County’s financial condition. Relying  
22 on the testimony of two economic experts (Bob Brownstein<sup>7</sup> and Mark Schniepp<sup>8</sup>), it  
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24 <sup>7</sup> Bob Brownstein formerly served as chief of staff for the Santa Clara County supervisors  
25 for 12 years with responsibility for all public policy issues, including fiscal policy. Subsequently, he  
26 served as Budget Director for the City of San Jose for 8 years. He currently serves as Strategic  
Advisor for Working Partnerships USA, a nonprofit organization that works on local public policy.

27 <sup>8</sup> As the current Director of the California Economic Forecast, Mark Schniepp prepares  
28 economic analysis and county level forecasts for the CA Department of Transportation, Kaiser  
Permanente, Blue Shield, CA State Auditor’s Office and Southern CA Association of Governments.

1 argues that the County continues to outperform the Measure F comparator counties with a  
2 more resilient economy, a quicker rebound from the pandemic, lower unemployment, a  
3 better housing market and quickly recovering sources of revenue. Relying on the testimony  
4 of Mark Schniepp, the Union questions the accuracy of the County's projections (because  
5 the accuracy of projections declines with each passing year and ten-year projections may be  
6 entirely speculative) and the rationale and function of the Public Safety Fund (because the  
7 County provided no evidence as to what percentage of the Public Safety Fund goes to  
8 funding the MOU at issue herein). The Union also notes that the County admits that the  
9 Public Safety Fund is used for three different law enforcement departments and that a  
10 negative ending fund balance for the Public Safety Fund would not necessarily signify a  
11 General Fund deficit.

## 12 **The Issue of Base Salary**

### 13 *The County's Position*

14 For more than 40 years, the base salaries of members of the Union's bargaining unit  
15 have been set on a yearly basis by application of the Measure F formula. Measure F,  
16 enacted by Placer County voters in 1976, was codified in 1977 as Placer County Code  
17 Section 3.12.040 (Placer County Sheriff's Ordinance Initiative). The ordinance requires the  
18 County to implement annual salary adjustments to members of the Union's bargaining unit  
19 by 1) determining the maximum salaries for comparable classes of positions in El Dorado,  
20 Nevada and Sacramento Counties; 2) calculating the average maximum salaries for those  
21 three agencies for each classification; and 3) setting the salary of the Placer County  
22 comparable classifications at a level equal to that average. This salary formula has been an  
23 integral part of the parties' negotiations during multiple contract cycles and continues as  
24 part of the current contract, i.e., the 2015-2018 MOU.<sup>9</sup>

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26 <sup>9</sup> At the factfinding hearing, the Union presented evidence that on January 12, 2021, the  
27 Board adopted a resolution modifying section 3.12.040 to remove all managers from its coverage.  
28 The Union argues that, in so doing, the Board of Supervisors re-adopted the ordinance to apply the  
Measure F formula to bargaining unit members. Similarly, the Union notes that the Board of  
Supervisors, since 2015, has used the same comparator counties to set their own compensation.

1       The County acknowledges that, for the first time since the enactment of Measure F,  
2 it now seeks to change the status quo by eliminating the Measure F formula from the  
3 parties' MOU. The County's stated purpose in seeking this fundamental change is to avoid  
4 escalating costs, i.e., described by County Finance and Budget Operations Manager  
5 Chatigny as costs that will become "fiscally unsustainable" at some future time within the  
6 next five to ten years. As an alternative to the Measure F formula, the County now proposes  
7 a three-year contract with a 4.0% increase effective the first full pay period of February  
8 2021, a 4.25% increase effective the first full pay period of February 2022, and a 4.5%  
9 increase effective the first full pay period of February 2023 (thus making the base salary of  
10 bargaining unit members *solely* a product of collective bargaining and no longer a matter  
11 governed by the provisions of the County's existing salary ordinance). The estimated cost  
12 of the County's salary proposal is 5.4 million dollars and is expected by both parties to  
13 exceed the base salary increases that would occur with the traditional application of the  
14 Measure F formula.

15       In seeking this change, the County asserts its statutory rights under the MMBA to  
16 negotiate base salaries.<sup>10</sup> The County also claims that the MMBA supersedes Measure F  
17 and that the continued application of Measure F violates the charter, passed in 1980, which  
18 gives the Board of Supervisors the right to set employee compensation. The County takes  
19 the position that while it was free to agree to the Measure F formula during contract  
20 negotiations, in so doing, it did not validate what it now regards as a void and  
21 unconstitutional ordinance preempted by the MMBA and precluded by the charter.<sup>11</sup>

### 22       ***The Union's Position***

23       The Union claims that the County cannot rely on a projected *future* deficit over a

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25       <sup>10</sup> The MMBA also gives the County the right to implement its last and final offer after an  
26 impasse in bargaining and exhaustion of impasse procedures; however, the Union may challenge  
27 implementation based on its position that the Employer's salary proposal is illegal, thus giving rise  
28 to still another dispute in what has been a very contentious process.

29       <sup>11</sup> In the period leading up to voter rejection of two initiatives to repeal Measure F in 2002  
and 2007, the County did *not* take the position that Measure F is illegal.

1 five to ten-year period as a means of exacting *current* concessions from the Union,  
2 especially where the County is enjoying robust growth and development compared to other  
3 northern California counties (including the comparator counties referenced in the salary  
4 ordinance). Besides arguing that the County has failed to carry its burden of establishing an  
5 economic justification for departing from the status quo, the Union also notes that the  
6 Measure F salary formula, endorsed by both prior Sheriff Edward Bonner and current  
7 Sheriff Devon Bell, has historically been an essential feature of the Placer County Sheriff's  
8 recruitment program. According to Union witnesses, the yearly application of the salary  
9 ordinance has enabled the County to attract and retain highly qualified officers.<sup>12</sup>

10 The Union emphasizes that the certainty afforded by yearly increases that are  
11 independent of the bargaining process<sup>13</sup> is extremely attractive to officers contemplating a  
12 lateral transfer to Placer County from another jurisdiction and that the elimination of  
13 Measure F from the County Code and the contract will pave the way for deep and lasting  
14 cuts after the agreement at issue in this factfinding expires. The Union seeks continuation  
15 of the existing wage formula, as well as a joint effort by the parties to submit a measure to  
16 the voters that would repeal the local ordinance and make the Measure F formula a part of  
17 the Charter. To further enable the parties to submit a measure to the voters (and to give the  
18 parties more time before they return to the bargaining table), the Union seeks a five-year  
19 contract term.<sup>14</sup>

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21  
22 <sup>12</sup> Consistent with the Union's position, the County's HR Director Kate Sampson testified  
23 that HR does not believe that the County currently has any recruitment or retention issues and that  
24 senior members of the bargaining unit are not leaving the County. In the panel's judgment, how the  
elimination of the salary ordinance would impact recruitment and retention is a matter of speculation  
by both parties.

25 <sup>13</sup> The significance of this point is underscored by the fact that even where a contract has  
26 expired and no successor agreement has been negotiated, unit employees continue to receive the  
27 yearly increases provided for by local ordinance, e.g., the bargaining unit received a February 2021  
increase even though the 2015-2018 MOU had expired and no new agreement had been reached.

28 <sup>14</sup> The County seeks a three-year contract term.



## **The Speciality Pay Issues**

As noted by the County's Director of Human Resources Kate Sampson, when viewing the December 2020 salaries for the enumerated Measure F counties, the Deputy Sheriff II classification appears to be behind but, when viewing total compensation, the bargaining unit is 21% above comparable agencies. The County has characterized this as a compensation model *that keeps base wages artificially low while over-inflating specialty pays*. In order to remedy escalating costs associated with specialty pays, the County proposes that percentage-based specialty pays be converted to flat dollar amounts as follows:

### **County Proposal 8 - Bilingual Pay**

- Change 5% of base salary to \$464.00 per month
- Estimated cost of proposal 8: \$5372

### **County Proposal 9 - Training Officer Pay**

- Change 5% of base salary to \$389.00 per month
- Estimated Cost Savings Proposal 9: \$57.00

### **County Proposal 10 - Detective Division Premium**

- Change 5% of base salary to \$510.00 per month
- Estimated Cost of Proposal 10: \$43,597.00

### **County Proposals 11 - Career and Education Incentive**

Intermediate Post - Change 12% of base salary to:

Deputy Sheriff I - \$735 per month.  
Deputy Sheriff II - \$1,030 per month.  
Sheriff's Sergeant - \$1,225 per month.  
Investigator - District Attorney - \$1,285 per month.  
Investigator - Welfare Fraud - \$1,285 per month.  
Investigator - Welfare Fraud Supervising - \$1,385 per month.

Estimated Cost for Intermediate Post: \$62,061

○ Advanced Post - Change 17% of base salary to:

- Deputy Sheriff I - \$1040 per month.
- Deputy Sheriff II - \$1,460 per month.
- Sheriff's Sergeant - \$1,735 per month.
- Investigator - District Attorney - \$1,825 per month.

- Investigator-Welfare Fraud - \$1,825 per month.
- Investigator – Welfare Fraud Supervising - \$1,960 per month.
- Estimated Cost Advanced Post: \$275,849<sup>15</sup>

The County takes the position that its proposals to convert percentage-based pays to flat dollar amounts will help put an end to escalating costs, cure the alleged defect in the Measure F formula, make it easier for the County to budget, and provide an immediate increase to members of the bargaining unit. To that end, the County proposes to convert percentages to set dollar amounts equal to 10% above the current amount that a qualified bargaining unit member would receive at the top step of the salary range.

In defending the status quo (providing for special pays as a percentage of base salary), the Union claims that the County has failed to establish an economic justification that would warrant converting percentage-based pays to flat amounts. Notwithstanding these concerns, the Union is agreeable to converting incentives for POST pay to flat dollar amounts (with increases as shown below):

**POST Intermediate Certificate:**

- Deputy Sheriff I - \$755 per month.
- Deputy Sheriff II - \$1060 per month.
- Sheriff's Sergeant - \$1,260 per month.
- Investigator – District Attorney - \$1320 per month.
- Investigator-Welfare Fraud - \$1,320 per month.
- Investigator – Welfare Fraud Supervising - \$1420

**POST Advanced Certificate:**

- Deputy Sheriff I - \$1,070 per month.
- Deputy Sheriff II - \$1500 per month.
- Sheriff's Sergeant - \$1,780 per month.
- Investigator District Attorney - \$1,870 per month.
- Investigator-Welfare Fraud - \$1,870 per month.

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<sup>15</sup> The County also seeks to continue the status quo with respect to the payment of \$100 per pay period for an AA degree, \$125 per pay period for a BA, and \$175 per pay period for a Masters Degree.

- 1
- 2 • Investigator – Welfare Fraud Supervising - \$2010 per month.<sup>16</sup>

3 Under the Union’s final proposal, the above incentive amounts are not cumulative or  
4 compounded and employees will receive only one rate of incentive pay for POST  
5 certification. Additionally, the Union also seeks to convert the flat dollar amounts for  
6 educational incentive to percentage pays as follows: 3% per pay period for an AA degree,  
7 4% per pay period for a BA and 5% per pay period for a Masters Degree. The Union takes  
8 the position that the savings attributed to implementing the Union’s proposal regarding base  
9 salaries can be reallocated to its proposed educational incentive program.

10 The Union also makes the following major points with respect to the various  
11 categories of special pay:

- 12 • Only small segments of the unit receive bilingual pay or training pay (as  
13 reflected above in the amount of savings projected by the county).
- 14 • The flat amount conversions, while providing a slight increase in the first  
15 year of the contract, would erode over time to the detriment of the unit.
- 16 • The County’s proposals for flat amount special pays fails to establish any  
17 substantial savings during the term of the successor contract which is the  
subject of this factfinding.

18 For these reasons, the Union claims that the County has not carried its burden of justifying a  
19 change in the status quo.

20 **County Proposals 12- Night Shift Differential**

- 21 ○ Change 7.5% of base salary to \$4.41 per hour.

22 The County proposes that this change be incorporated into the existing language of Section  
23 8.11 (Shift Differential). This proposal was unacceptable to the Union as evidenced by the  
24 testimony of Kate Sampson who stated that the Union’s negotiator Mark Salvo was ready to  
25

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27 <sup>16</sup> The Union proposes these adjustments to reflect “the Measure F raise effective February  
28 2021” to insure that its members do not receive an immediate pay cut (when compared to the terms  
of the existing contract).

1  
2 take the County's December 8, 2020 package proposal to the membership for a vote *if* the  
3 County would withdraw its demands for elimination of Measure F (clearly the paramount  
4 issue here), the night shift proposal was *not* included, and the proposed flat amount pays  
5 were further escalated beyond the amount then offered to reflect any Measure F increases in  
6 effect as of February of 2021 (as reflected in the Union's current POST pay proposal).

7 The Union additionally argues that the factfinding panel should give great weight to  
8 the settlement of a pending grievance involving the night shift, signed by the County on  
9 March 16, 2017, which contains the following language: "The parties agree that during  
10 successor negotiations the language in Section 8.11 may be entirely replaced with  
11 Attachment A (to the settlement agreement) subject to the mutual approval of the parties." <sup>17</sup>  
12 While admitting that the language used by the parties implies "discretion," the Union  
13 proposes that the current contract language should be continued and that Attachment A  
14 should be included in the MOU as a side letter.

#### 15 **The County's Longevity Pay Proposal**

16  
17 County proposal 14 adds a single sentence to Section 8.12, subsection a (1). The  
18 proposed new language reads as follows: "This special compensation shall not be reportable  
19 to CalPERS." The Union's counterproposal seeks increases in longevity pay and does not  
20 incorporate the County's proposed new language.

#### 21 **Tahoe Branch Assignment Pay**

22 Bargaining unit members who are assigned to the Lake Tahoe area receive a  
23 compensation incentive of \$875.00 per month to offset the increased costs associated with  
24 the cost of living in the Lake Tahoe area. The County proposes various clarifying  
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26  
27 <sup>17</sup> The un rebutted testimony of Mark Salvo establishes that the parties had an understanding  
28 that the side letter (Attachment A) would resolve the parties' dispute about payment of night shift  
differential going forward into the next contract.

1  
2 provisions including a requirement that to be eligible for Tahoe Branch assignment pay,  
3 employees must have a secondary dwelling within 50 driving miles of the Placer County  
4 Sheriff's Burton Creek substation.<sup>18</sup> The Union proposes to substitute "60 air miles" in lieu  
5 of "50 driving miles." The County argues that its proposal is sufficient insofar as it allows  
6 employees with a residence in Reno and Sparks to receive the incentive, as shown on a map  
7 that was part of the County's presentation. The Union seeks a geographically broader  
8 application of the incentive pay to allow its members more flexibility in selecting schools  
9 and housing, i.e., noting that additional compensation helps employees with expenses such  
10 as snow tires, chains, and vehicles suitable for inclement weather.

#### 11 **The County's Proposals to Control Benefit Costs**

##### 12 *Employee CalPERS Contributions*

13 As noted by the County in post-hearing brief, County proposals 15 and 16 are the  
14 only proposals that result in immediate cost savings to the County. County proposal 15  
15 proposes a gradual realignment that will require classic or tier 1 employees to fund their full  
16 share of retirement contributions. Presently, the County is paying some of the "Employer  
17 Paid Member Contribution (EPMC)" on behalf of tier 1 employees. This is in contrast to  
18 Sacramento County (one of the Measure F counties) where employees pay the entire EPMC,  
19 as well as a portion of the employer contribution. In support of this proposal, the County  
20 presented evidence that, based on reduced investment returns to PERS, the County is  
21 projecting its total yearly PERS contributions to grow from \$92 million in 2021 to \$112  
22 million in 2030. The County estimates yearly savings at \$155,000.00, or 0.36% of salary.  
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26  
27 <sup>18</sup> The existing MOU contains no requirement that the employee must have a secondary  
28 dwelling; however, the Union agreed to the new requirement during the course of bargaining  
assuming that the County would accept its version of an appropriate radius, i.e., 60 air miles.

1  
2 The Union rejects this proposal based on its claim that the County has not  
3 demonstrated a need to reduce CalPERS contributions for tier 1 members. In support of this  
4 claim, the Union cites the testimony of HR Director Kate Sampson that, at one point  
5 during the negotiations, the County had expressed a willingness to drop the retirement  
6 contribution proposal if cost savings could be achieved through other means.

7 ***County Contributions to Health Care***

8 The County proposes to change its contribution from the current contribution of  
9 80% of the total health care premium for any health plan offered by the County (except  
10 PERS Care) to 80% of the PORAC plan. At the hearing, the County made a presentation  
11 showing that this would generate yearly savings of \$255,357 or 0.60% of salary.

12 The Union withdrew its request that the County pay 20% of any available plan and  
13 now proposes to maintain the status quo. The Union opposes the change in the status quo on  
14 the grounds that it has an interest in maintaining a variety of plans with an 80/20 split due to  
15 the high costs of health services and lack of coverage options in the Tahoe region.

16  
17 **The County's Proposals Regarding Dental and Vision Care**

18 County proposal 17 seeks to remove what the County characterizes as an  
19 "unnecessary and potentially misleading reference" to dental implant coverage. This is not a  
20 proposed change in practice or plan design. The County's dental insurance plan covers dental  
21 implants assuming the plan requirements have been met. The language that the County  
22 seeks to remove from Article 6, Section 6.2 reads as follows: "Effective the plan year  
23 beginning January 1, 2017, dental implants will be included in the coverage for PCDSA  
24 employees." Similarly, County Proposal 18 seeks to remove "unnecessary and outdated  
25 language" regarding vision care coverage. The language at issue reads: "The County shall  
26 provide vision insurance at the 100% employee-only rate." The Union seeks to strike  
27 County Proposal 17, as contained in the 2015-2018 MOU, from the successor agreement.  
28

1  
2 The Union further asserts that since County proposals 17 and 18 contain reopener  
3 language, these proposals should not be recommended by the factfinding panel.<sup>19</sup>

#### 4 **The Union's Non-Economic Proposals**

##### 5 *Term of Contract*

6 The Union is proposing a contract term of five years, beginning on July 1, 2021, in  
7 order to allow the parties adequate time to submit a measure to the voters to move the  
8 Measure F salary adjustment formula from the Placer County Code to the Charter while  
9 maintaining the 44-year old Measure F formula in a five-year successor agreement. The  
10 Union notes that a five-year term also allows the parties at least two (2) opportunities to  
11 submit a measure to the voters in an effort to resolve the dispute over the continuing  
12 viability of the local salary ordinance. As this fiscal year is approaching its conclusion, the  
13 Union believes that the five-year term should run through June 30, 2026. The Union also  
14 takes the position that since the parties have been without a contract for three years, a longer  
15 term contract will foster labor harmony by avoiding an immediate return to negotiations.  
16 The County desires to continue the status quo with regard to a three-year contract term.

##### 18 *Grievance Procedure*

19 The Union seeks to amend Article 4 of the MOU to add final and binding arbitration  
20 as the final step of the grievance process. Currently, a bargaining unit member must exhaust  
21 administrative hearing procedures before the Civil Service Commission before filing a writ  
22 in the superior court. The Union seeks a process that allows resolution of the dispute by an  
23 impartial and jointly selected neutral. The Union notes that all of the Measure F  
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26 <sup>19</sup> The Union cites PERB authority for the proposition that reopeners are non-mandatory  
27 subjects of bargaining and that, as such, the Union cannot be forced to agree to reopener language,  
28 i.e., even language that currently exists in the 2015-2018 MOU. This is just one of the many legal  
issues that would be pursued in the event that the parties do not reach a settlement of the contract.

1  
2 jurisdictions, as well as comparators used by the County in its own survey, have final and  
3 binding arbitration as the final step of the grievance procedure. The County desires to  
4 continue the status quo with regard to disputes involving interpretation of the provisions of  
5 the MOU.

#### 6 ***Discipline***

7 The Union also seeks final and binding arbitration as the final step of the disciplinary  
8 process with each party to share equally in the expenses of arbitration as an alternative to a  
9 hearing before the Civil Service Commission. The Union lacks confidence in the Civil  
10 Service Commission to act as a neutral third party. The County seeks to continue the status  
11 quo with respect to disciplinary procedures applicable to bargaining unit members.

#### 12 ***Personnel Files***

13 The Union seeks to add new language to Section 14.6 which identifies non-  
14 disciplinary corrective actions, provides for how records of such actions will be maintained  
15 and establishes time periods for their removal. The proposal also sets forth when letters of  
16 reprimand should be removed from a unit employee's personnel file. The Union takes the  
17 position that corrective actions should not be considered discipline but may be used for  
18 performance evaluations. The Union argues that corrective actions should be removed from  
19 the divisional file if there are no repeat offenses by the next evaluation cycle. The Union  
20 proposes that letters of reprimand should be removed from an employee's personnel file  
21 after two  
22 years from the original date of issuance; provided, however, that the employee has not been  
23 subject to disciplinary action during the two-year period. Currently, unit employees must  
24 actively seek to have letters removed. Employees are concerned that stale discipline may  
25 have an impact on their ability to gain special assignments or promote. The County seeks to  
26 continue the status quo on the grounds that the Union's proposal to purge letters of  
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1  
2 counseling or reprimand is unnecessary, lowers the County's expectations for its deputy  
3 sheriffs, and exposes the County to liability.

#### 4 ***Catastrophic Leave***

5 The Union proposes a change to the Catastrophic Leave program that addresses the  
6 issue of what happens when an employee who received a leave donation is subsequently  
7 reimbursed for the use of leave through Workers' Compensation. The Union challenges  
8 the existing practice which allows an employee whose leave banks are restored to keep the  
9 donated vacation leave which may or may not have been used. To remedy this anomaly, the  
10 Union requests that the panel recommend inclusion of the following new language as  
11 Section 14.14 of the MOU;

12 Donated leave is only transferred from the donor to the receiving employee as needed  
13 and chronologically by date of donation (i.e., first donated, first used). Time  
14 donations are irrevocable by the donor once the time has been used by the receiving  
15 employee. In the event that the receiving employee does not need to use all donated  
16 leave for the catastrophic illness/or injury, any unused donations will not be deducted  
17 from the original donor's balance. In the event that the receiving employee has a  
worker's compensation claim approved for which the employee receives worker's  
compensation paid leave, the County will reimburse any donated leave that was  
used by the recipient prior to the approval of the worker's compensation claim.

18 The County opposes the inclusion of this provision based on "serious potential tax  
19 implications for both donating and receiving employees" under the proposal. The County  
20 did not provide a detailed explanation as to the tax implications associated with restoring  
21 leave (whether used or unused) and did not specifically identify any costs that would be  
22 incurred by the County in the event that the Union's proposal were to be implemented.

#### 23 **RECOMMENDATION OF THE PANEL**

24 ***The record does not establish that continuation of the Measure F formula, as it pertains***  
25 ***to base salary only, will result in uncontrolled or unsustainable costs during the term of***  
***the successor contract or at any time in the future.***

26 Where the parties have incorporated the language of a local salary ordinance into  
27 their MOU for the last 44 years, this implicates factors (2), (4), (5), (6) and (7) of the  
28

1  
2 MMBA criteria. For reasons explained herein, the panel has concluded that the County's  
3 legitimate goal of controlling future costs can only be realized through changing the  
4 structure of special pays, as opposed to changing the base salary formula.

5 The County has repeatedly emphasized that its bargaining goals are 1) to avoid  
6 uncontrolled cost escalation; 2) to achieve market alignment with neighboring counties; and  
7 3) to promote long-term fiscal sustainability. Logic dictates that stemming future costs  
8 cannot be achieved through the elimination of a base salary formula that is based on the  
9 average wages paid to law enforcement personnel by other northern California counties with  
10 less robust economies. Lending additional support to this conclusion, the County has itself  
11 characterized the base salary formula as a formula that has created "artificially low wages."  
12 Under these circumstances, the real exposure to escalating costs is not created by the base  
13 salary formula but rather by the tying of percentage pays to automatic yearly wage increases.  
14 As described by the County in its final arguments to the panel, the current compensation  
15 program has kept base wages low while over-inflating specialty pays.  
16

17 The benefit which the County now seeks to eliminate has two distinct components:  
18 1) the formula for arriving at the yearly salary increase using the salary data from the  
19 Measure F counties and 2) the automatic payment of the yearly increase<sup>20</sup> independent of  
20 collective bargaining. With regard to the first component of the benefit, the County has not  
21 argued that the Measure F counties are inappropriate for purposes of base salary  
22 comparisons. To the contrary, the repeated inclusion of the Measure F formula in the  
23 contract during multiple contract cycles implies mutual acceptance of their comparability  
24 dating back to 1977. Where there is no persuasive evidence that the County is  
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26 <sup>20</sup> Theoretically, if El Dorado, Nevada and Sacramento counties paid no increases and the  
27 average increase was \$0.00, the Union would receive no increase. There is no evidence that during  
28 the history of the parties' bargaining relationship, there was ever a year in which no increase was  
given.

1  
2 disadvantaged by the Measure F base salary formula, or that the Measure F counties are not  
3 comparable, the panel must conclude that the County has *not* established an economic  
4 justification for abandoning the existing base salary formula .

5 ***The Union's proposal to submit a ballot measure to voters to adopt the Measure F***  
6 ***formula as part of the Charter serves the best interests and welfare of the public.***

7 In arguing that Measure F is illegal, the County posits that 1) the local ordinance is  
8 unconstitutional; 2) the local ordinance is in conflict with state law (the MMBA); and 3) the  
9 local ordinance is preempted by the County Charter. Where neither party has been able to  
10 supply legal authorities that would enable reliable predictions as to the outcome of litigation,  
11 the contentions of both parties are, at best, legal theories that may or may not prove  
12 successful when tested in a judicial forum. Due to the legal uncertainties surrounding what  
13 has been the most divisive issue in the negotiations, the panel is recommending adoption of  
14 the Union's salary proposal, as modified by the panel herein. Adopting the Union's proposal  
15 to submit a ballot measure to the voters is more likely to pave the way for more harmonious  
16 labor relations whereas the County's wage proposal, tied to elimination of County Code  
17 Section 3.12.040, is likely to expand existing disputes into uncharted terrain with  
18 potential unknown consequences to the parties.

19 ***The County's legal arguments do not present an "open and shut" case.***

20 ***The Unconstitutionality Argument***

21 While the County has expressed a high level of confidence that it has the winning  
22 arguments regarding Measure F, a review of the legal authorities on which the County relies  
23 reveals that the County has raised issues that are both complex and novel. In post-hearing  
24 brief, the County argues that the local ordinance infringes on its authority under Article 11  
25 of the California Constitution to determine its employees' compensation; however, a review  
26 of the language of Article 11 does not lead inexorably to that conclusion. For example,  
27 Section 4 of Article 11 provides: "County charters shall provide for: ... (f) The fixing and  
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1  
2 regulation by governing bodies, *by ordinance*, of the appointment and number of ... persons  
3 to be employed. Article 11, Section 7 of the California Constitution also specifically  
4 provides that a county may make and enforce within its limits ordinances and regulations  
5 that are not in conflict with general laws. There is no language in Article 11 of the California  
6 constitution which addresses the legality or enforceability of a local ordinance that  
7 establishes a formula for ascertaining whether or not to administer annual base salary  
8 increases. Recognizing that the general language of Article 11 does not provide definitive  
9 support for its position, the County has looked for additional support in court decisions.

10 Specifically, the County relies on the California Supreme Court's decision in  
11 *Sonoma Cty. Org. Of Pub. Employees v. Cty of Sonoma* (1979) 23 Cal. 3d 296 to argue  
12 that County Code section 3.12.040 is unconstitutional. In a case almost as old as Measure  
13 F, the Court examined the constitutionality of Government Code §16280 (prohibiting the  
14 distribution of state surplus or loan funds to any public agency granting cost-of-living or  
15 salary increases over and above increases provided to state employees). There, a group of  
16 unions representing county employees principally argued that the statute was an  
17 unconstitutional impairment of contract (referring to the MOUs which provided for wages  
18 that, if paid, would conflict with the requirements of the statute). The Court was also asked  
19 to determine the question of whether Government Code §16280 violated Article XI of the  
20 California Constitution because it interferes with the rights of chartered counties to  
21 determine the compensation of their employees *through collective bargaining*. Although the  
22 Court did find the challenged statute to be unconstitutional on multiple grounds, the  
23 consequences of the Court's decision was to enforce the terms of the negotiated MOUs and  
24 to invalidate a statute that would have otherwise penalized county employers by denying  
25 them funds designed to mitigate the effects of Proposition 13.  
26  
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1  
2 In *County of Sonoma*, the Court specifically found that there could be no doubt that  
3 there was a conflict between the challenged statute (which effectively invalidated wage  
4 increases that had been agreed to by cities and counties) and the ordinances or resolutions of  
5 the local agencies that ratified the agreements. Here, there is no such showing of a conflict.  
6 To the contrary County Code Section 3.12.040 and the negotiated agreements have co-  
7 existed for a period of 44 years in harmony as both the local ordinance and successive  
8 MOUs have contained the identical base salary formula. Under these circumstances, it is  
9 doubtful that any court would conclude that the Supreme Court's decision in *County of*  
10 *Sonoma* compels the conclusion that County Code Section 3.12.040 is unconstitutional.<sup>21</sup>

### 11 ***The MMBA Preemption Argument***

12 As a threshold matter, the MMBA contemplates that as a statewide statute, it will  
13 coexist with charters, ordinances and rules of public agencies as reflected in the following  
14 language of Government Code § 3500 (a):

15 It is the purpose of this chapter to promote full communication between public  
16 employers and their employees by providing a reasonable method of resolving  
17 disputes regarding wages, hours, and other terms and conditions of employment  
18 between public employers and public employee organizations. It is also the purpose  
19 of this chapter to promote the improvement of personnel management and  
20 employer-employee relations within the various public agencies in the State of  
21 California by providing a uniform basis for recognizing the right of public employees  
22 to join organizations of their own choice and be represented by those organizations in  
23 their employment relationships with public agencies. **Nothing contained herein  
shall be deemed to supersede the provisions of existing state law and the  
charters, ordinances, and rules of local public agencies that establish and  
regulate a merit or civil service system or which provide for other methods of  
administering employer-employee relations nor is it intended that this chapter  
be binding upon those public agencies that provide procedures for the  
administration of employer-employee relations in accordance with the**

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24  
25 <sup>21</sup> The County's reliance on *San Francisco Labor Council v. Regents of Univ. of California*  
26 (1980) 26 Cal. 3d 885 is similarly unavailing. This case raises the issue of whether the Regents  
27 could be compelled to fix minimum salary rates for certain employees at or above prevailing rates in  
28 accord with Education Code §92611. Since the California Constitution specifically provides that  
the University operates as independently of the state as possible and can only be regulated as  
specified in Article IX, any attempt to analogize to this case is unlikely to be successful.

1  
2       **provisions of this chapter. This chapter is intended, instead, to strengthen merit,**  
3       **civil service and other methods of administering employer-employee relations**  
4       **through the establishment of uniform and orderly methods of communication**  
5       **between employees and the public agencies by which they are employed.**  
6       Emphasis supplied.

7       The above-quoted statutory language helps to explain why local ordinances continue to be  
8       applied to represented employees throughout the state of California.

9       In post-hearing brief, the County takes the position that the MMBA preempts any  
10      local labor-management procedures which foreclose salary negotiations. This presupposes  
11      that the parties' repeat *agreements* to use the Measure F formula, as both a ceiling and a  
12      floor, foreclosed negotiations. This assumption is simply not accurate. As explained in this  
13      report, the parties, over the course of decades, have mutually agreed to use the same formula  
14      currently used by the Board of Supervisors to determine their own compensation. In  
15      advocating the principle of MMBA preemption, the County cites two cases, i.e., *Voters for*  
16      *Responsible Retirement. v. Bd. of Supervisors* (1994) 8 Cal 4<sup>th</sup> 765 and *City of Fresno v.*  
17      *People ex. Rel. Fresno Firefighters, IAFF Local 753* (1999) 71 Cal. App. 4<sup>th</sup> 82. Neither of  
18      these cases is squarely on point nor does either case provide unassailable support for the  
19      County's position.

20      In *Voters for Responsible Retirement*, the California Supreme Court concluded that,  
21      contrary to the contentions of both parties, Article XI, section 1 (b) of the California  
22      Constitution neither restricts nor secures the local right of referendum on employee  
23      compensation decisions. The Court further concluded that Government Code §25123 (e)  
24      (providing that ordinances relating to and other compensation of employees take effect  
25      immediately), read in conjunction with the MMBA , does restrict the people's right of  
26      referendum in a case in which the ordinance that would be the subject of the referendum  
27      specifically relates to the implementation of an MOU.

1  
2 In *Voters for Responsible Retirement*, the Trinity County Board of Supervisors had  
3 approved a three-year MOU with various employee associations which included various  
4 changes to the retirement plan subject to completion of various statutory requirements, i.e.,  
5 amendment of the County's contract with PERS. The Board subsequently approved the  
6 amendment of the contract through Ordinance 1161. Due to community concern that the  
7 new retirement plan created a financial burden on the County, the required signatures were  
8 gathered to challenge the ordinance through repeal or referendum. While the case does  
9 address to what extent the MMBA restricts the use of the referendum to overturn the product  
10 of negotiations between employers and unions (MOU provisions), it does not address to  
11 what extent an employer may *unilaterally* repeal a local ordinance which has for more than  
12 40 years served as the formula for base salary negotiations.

13 City of Fresno raises the issue of whether a city may contractually agree, under a  
14 labor agreement between the city and its labor unions pursuant to the MMBA, to refrain, for  
15 the duration of the agreement, from exercising its right to propose charter amendments to the  
16 voters. In *City of Fresno*, a charter provision prescribed an eight-city formula under which  
17 the council was required to set salaries for police officers and firefighters based on the  
18 average salaries paid to their counterparts in eight other California cities. Due to an  
19 unsuccessful attempt to repeal the charter provision under prior agreements and the  
20 continuing concern of both police and fire unions that a citizens' group might attempt to put  
21 the repeal on the ballot for a second time, the MOUs contained language providing for an  
22 alternative salary setting method in the event that the eight-city formula were to be  
23 eliminated by a vote of the electorate. The MOUs also contained a zipper clause requiring  
24 any party desiring to change a provision of the MOU during the term of the contract to  
25 request a meet and confer and further stating that a party may refuse a request to meet and  
26 confer if the matter on which negotiations was being sought was covered by the MOU, or the  
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28

1 subject of a written proposal during negotiations. Thereafter, the City requested to meet  
2 with the unions to discuss a possible repeal. When the unions refused to meet, the City  
3 brought an action requesting an injunction and declaratory relief.

4 Citing *County of Sacramento v. Fair Political Practices Com.* (1990), 222 Cal. App.  
5 3d 687, the court initially observed that when a charter city legislates with regard to  
6 municipal affairs, its charter prevails over state law. However, as to matters of statewide  
7 concern, charter cities remain subject to state law. In finding that the constitutional grants  
8 of authority to a charter city are not absolute, the court specifically stated:

10 The Supreme Court has held on several occasions that these provisions must be  
11 harmonized with laws addressing matters of statewide concern. General laws  
12 seeking to accomplish a statewide objective may prevail over conflicting local  
regulations even if they impinge upon some phase of local control. *Baggett v. Gates*  
(1982) 32 Cal. 3d 128.

13 Based on its reading of *People ex. rel. Seal Beach Police Officers Assn. v. City of Seal Beach*  
14 (1984) 36 Cal. 3d 591, the court concluded that to promote harmonious and stable labor  
15 relations (a matter of statewide concern), the City must meet and confer on charter  
16 amendments which involve a mandatory subject of bargaining and that once a city has  
17 bargained and agreed in an MOU to forego its power to propose amendments for the term of  
18 the agreement, the agreement is binding.

19 In sum, *City of Fresno* does not support the County's position that the MMBA, a  
20 general statute of statewide concern, preempts a more specific statute, i.e., Section 3.12.040  
21 of the County Code. Nor does it stand for the proposition that Measure F is in conflict with  
22 the MMBA; that the MMBA supersedes the ordinance; or that Measure F is unenforceable.

#### 24 ***The Charter Supersession Argument***

25 As the third prong of its argument, the County argues that its Charter, enacted in  
26 1980, supersedes Measure F insofar as the Charter contradicts County Code § 3.12.040.  
27 Specifically, the County focuses on Charter Section 302 (b) which empowers the Board of  
28



1 Supervisors to set compensation for County employees. This argument ignores the fact that  
2 County has an obligation under a statute of statewide concern (the MMBA) to bargain with  
3 the Union regarding not only compensation but other mandatory subjects of bargaining  
4 whether or not specifically authorized by the Charter. Stated another way, the power of the  
5 Board of Supervisors to “set compensation” (here through the bargaining process in  
6 accordance with the MMBA) does not negate either the Union’s role in the negotiating  
7 process or the role of the electorate in repealing a voter-enacted ordinance.  
8

9 In sum, the issues around Measure F are novel and complex and the cited cases are  
10 not directly on point. Under these circumstances, litigation for both parties would likely be  
11 expensive and unpredictable and there could be unforeseen outcomes for both parties.

12 ***The panel recommends changes to the Union’s proposal.***

13 While the Measure F formula, *as applied to base salary*, has not resulted in  
14 uncontrolled or unsustainable costs, the issues surrounding Measure F have been the most  
15 contentious. For this reason, the panel questions whether the parties should agree to a date  
16 certain for submission of the ballot measure. In the interest of promoting harmonious labor  
17 relations, the panel recommends that the successor agreement commence on July 1, 2021  
18 and remain in effect for a period of five years, i.e., ending on June 30, 2026, and that any  
19 attempt (s) to secure a voter-enacted Charter amendment occur prior to expiration of the  
20 contract. The panel also recommends that, in order to foster collaboration between the  
21 parties, each of the parties agree to withdraw all pending unfair labor practice charges.<sup>22</sup>  
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23  
24 <sup>22</sup> Since the Union’s proposal contemplates that the parties will be working together to  
25 formulate the precise language of the Charter measure, the parties may wish to consider whether the  
26 the average wage derived from the comparators should be considered a salary minimum or “a floor  
27 and a ceiling.” If the language provides only for minimums, with the opportunity to negotiate  
28 additional increases at the bargaining table, this would keep the automatic yearly increases  
(independent of the bargaining process) in effect but the County would have the freedom to  
negotiate what it regards as regionally competitive base salaries that exceed the minimums during  
the next round of bargaining. Thus, this approach may benefit both parties.

1           The recommended approach, i.e., letting the voters decide a contentious issue that  
2 the parties have been unable to resolve in bargaining, addresses the County's concern that  
3 the existing Charter, as amended in 1980, supersedes the local ordinance, as well as the  
4 Union's concern that the elimination of Measure F usurps the authority of the voters and  
5 invites litigation by citizen groups. When viewed in the entire context of the recommended  
6 terms of settlement, this is a reasonable pathway for the parties to work together to repeal  
7 the local ordinance and re-adopt the same base salary formula, applied annually, as part of  
8 the Charter.  
9

10           While no one can accurately predict the outcome of litigation, the issues raised by  
11 the parties herein are complex and novel issues of first impression. These issues could take  
12 years to finally determine; have a real potential to further undermine the already strained  
13 relationship of the parties, and would likely prove very expensive to litigate. Taking these  
14 factors into consideration, the panel recommends adoption of the Union's proposal, as  
15 modified herein, because it places resolution of the Measure F issue in the hands of the  
16 voters and enables the parties to engage with each other in a more collaborative manner. It  
17 is also worth noting that acceptance of the Union's proposal does not frustrate what the  
18 County has identified as its principal goals of avoiding uncontrolled cost escalation,  
19 achieving market alignment with neighboring counties, and promoting long-term fiscal  
20 sustainability.  
21

22           ***The conversion of percentage pays to flat amount pays, as described herein, will bring the***  
23 ***total compensation of bargaining unit members into closer alignment with the***  
***comparator counties.***

24           The panel has concluded that the bargaining unit is being paid at a rate that  
25 significantly outpaces the *total compensation* paid to other similarly situated employees in  
26 the Measure F counties and that deputy sheriff salaries have, particularly within the past five  
27 years, outpaced increases in the consumer price index. In comparing the impact of base  
28

1 salary and percentage pays on total compensation, the panel has further concluded that the  
2 market position of the Union's members (21% ahead of the market) is a function of total  
3 compensation as driven by percentage pays, and *not* by base salaries.  
4

5 The position of the bargaining unit, vis-a-vis the Measure F counties, is largely a  
6 product of escalating percentage pays that are *regularly* paid to members of the bargaining  
7 unit, i.e., percentage pays that grow automatically with each annual increase. The panel  
8 distinguishes two special pays, i.e., Field Training Officer pay and night shift differential,  
9 because these special pays are paid on an *intermittent* basis. As to the two intermittent  
10 special pays, the panel recommends continuation of the status quo as neither FTO pay nor  
11 night shift differential have been shown to materially impact the County's goal of avoiding  
12 escalating future costs expected to become fiscally unsustainable. On the other hand, where  
13 the regularly paid incentive pays collectively represent approximately 50% of total  
14 compensation, the County's argument (that tying these pays to Measure F salary increases  
15 has over-inflated special pays) is persuasive. In the panel's view, tying the growth of  
16 special pays to annual base salary increases amplifies the impact of the local ordinance and  
17 fuels the disparity in overall compensation between Placer County and the Measure F  
18 counties.  
19

20 In sum, the County's proposal to address this disparity by converting percentage  
21 pays to flat amounts, while at the same time increasing these pays on a one-time basis, is a  
22 fair and balanced approach to controlling future costs without adversely impacting current  
23 wages. The impact of the County's proposal to rein in escalating costs would be blunted if  
24 the panel were to accept the Union's proposal to change educational pays to percentage pays.  
25 The panel therefore recommends that the County's proposals be adopted with regard to  
26 Detective Pay, Career/Education Incentive (**with the Union's proposed flat amount**  
27  
28

1 **payments),<sup>23</sup>** and Bilingual Pay. With regard to the intermittent pays, the panel recommends  
2 that the Union's proposals with regard to FTO Pay and Night Shift Differential be adopted.

3  
4 Under the circumstances presented here, the continuation of the Measure F formula  
5 in setting base salaries on an annual basis, along with the parties' joint commitment to  
6 submit a measure to the voters (that would repeal Section 3.12.040 of the County Code and  
7 enact a charter amendment that sets annual salaries using the Measure F formula) is the quid  
8 pro quo for the elimination of the lion's share of the percentage pays as proposed by the  
9 County. This compromise serves the interest and welfare of the public because it addresses  
10 the County's need for predictability in budgeting; maintains the predictability of annual base  
11 salary readjustments for Union-represented employees and brings bargaining unit members'  
12 overall compensation into closer alignment with the comparator counties.

13 ***The panel recommends the Union's proposal for a 60 air-mile radius***

14 Two other special pays that are the subject of the dispute are the Tahoe Branch  
15 Assignment Pay and Longevity Pay. Where the Union conceded the issue of the  
16 requirement of a dwelling in the Tahoe area, allowing the Union a wider area for location  
17 of the dwelling is a reasonable compromise. This is especially true where the 60 air-mile  
18 radius proposed by the Union is designed to give officers more flexibility in selecting  
19 schools and housing which presents unique challenges in the Tahoe region.

20 ***The panel also recommends adoption of the County's new longevity pay language and***  
21 ***continuation of the status quo with regard to longevity pay amounts.***

22 With regard to Longevity Pay, the panel concludes that the language sought by the  
23 County is reasonable in light of PERS regulations and should be adopted. With regard to the  
24 Union's proposal to increase longevity pay, there is no sufficient showing that higher rates of  
25 longevity pay are warranted.

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27 <sup>23</sup> Consistent with the panel's recommendation on the salary issue, the panel recommends  
28 the Union's proposed flat amounts as they reflect the Measure F raise effective February 2021.

1 ***The panel also recommends adoption of County proposals 15 and 16.***

2 In its hearing presentation, the County presented un rebutted evidence that employer  
3 contribution rates are expected to increase dramatically in the coming decade and that to the  
4 extent that the County continues to fund a portion of EPMC on behalf of tier 1 employees,  
5 this burgeoning liability is exacerbated. While the County may have been willing at one  
6 point during the course of the negotiations to drop this proposal if other savings could be  
7 achieved, this does not alter the fact that implementation of the proposal would result in an  
8 immediate yearly savings to the County at a time when its liability for PERS contributions is  
9 increasing. The panel recommends that the County's proposal 15 become one of the terms  
10 of a final settlement of the contract.

11 Similarly, the County's proposal to control the cost of its contributions to health care  
12 would result in an immediate savings at a time when the cost of health insurance is  
13 universally rising. While the panel has considered the burden placed on officers assigned to  
14 the Tahoe area, this evidence is not sufficiently persuasive to dissuade the panel from  
15 recommending that proposal 16 become a part of the parties' successor agreement.

16 ***The panel recommends the continuation of existing language of Articles 6.2 and 6.10.***

17 The County's proposals 17 and 18 regarding dental and vision care are unrelated to  
18 cost savings. These requests for changes in language are deemed by the panel to be of little  
19 consequence to either party. The panel will therefore recommend a continuation of the  
20 status quo with respect to Articles 6.2 (Dental Insurance) and 6.10 (Vision) for the life of the  
21 successor agreement.<sup>24</sup>

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25 <sup>24</sup> In making this recommendation, the panel makes no finding regarding the Union's  
26 allegation that by insisting to impasse that the Union agree to a non-mandatory subject (reopener),  
27 the County has engaged in an unfair labor practice. In any event, if the parties were to accept the  
28 recommendations of the panel for settlement of the contract terms, this legal issue, like multiple  
other legal issues, would become irrelevant during the term of a five-year agreement.

1 ***The panel does not recommend final and binding arbitration of discipline grievances.***

2 While the Union claims that administrative procedures before the Civil Service  
3 Commission do not provide the same level of fairness as final and binding arbitration by a  
4 neutral arbitrator mutually selected by both parties, there is no solid evidence that the system  
5 in place is not working to vindicate the rights of the Union's members who have been  
6 subjected to disciplinary action. No specific evidence was presented that would  
7 demonstrate that an inordinate number of cases are being appealed to court; that the hearing  
8 officers are biased or unqualified to decide disciplinary issues (that probably do not involve  
9 an interpretation of the parties' contract); that employees are being denied their due process  
10 rights; or that the existing system is riddled with delay or some other procedural unfairness.  
11 Under these circumstances, the panel recommends a continuation of the status quo with  
12 respect to the final appeal of disciplinary action as set forth in Article 11.

13  
14 ***The panel recommends final and binding arbitration of contract interpretation***  
15 ***grievances.***

16 With respect to Article 4, the panel recommends acceptance of the Union's proposal  
17 #2 with respect to a proposed change in the final step of the grievance procedure, i.e., from  
18 the filing of a formal complaint with the Civil Service Commission (the current final step) to  
19 final and binding resolution by a third party neutral (as proposed by the Union). As noted  
20 by Union President Noah Frederito in his hearing testimony, the parties have frequent  
21 disputes over the meaning of their contract. Unlike disciplinary appeals, contract  
22 interpretation grievances may affect all or a substantial number of employees in the  
23 bargaining unit. Where the rulings of the Civil Service Commission are not final and  
24 binding and may be appealed to the superior court, the duration of contract disputes may be  
25 unduly prolonged, i.e., spilling over into a new contract cycle and bringing legal disputes to  
26 the bargaining table.

1           The Union proposes using the roster of neutrals provided by the California State  
2 Mediation Service (CSMCS). Arbitrators on this CSMCS roster have special expertise in  
3 resolving disputes regarding the interpretation of collective bargaining agreements. In  
4 accord with the Union's proposal, the arbitrator is mutually selected by the parties from a list  
5 of qualified neutrals through an alternate striking procedure and the fees and expenses of the  
6 arbitrator, who makes a final decision, are shared equally by the parties.  
7

8           Here, the Union is not seeking a benefit that is rarely provided to other law  
9 enforcement groups. To the contrary, this is a benefit enjoyed by every agency that the  
10 County identified in one of its own surveys, as well as Measure F counties. The County  
11 objects to final and binding arbitration on the grounds that there is no showing of unfairness  
12 on the part of Sheriff's Department management. This argument ignores the fact that the  
13 Union seeks to transform what has essentially been a unilaterally imposed multi-level appeal  
14 process into a *negotiated* procedure for dispute resolution that is more streamlined.

15           Submitting disputes over interpretation of contract provisions to an impartial third  
16 party neutral is a tried and tested method of dispute resolution in unionized settings that has  
17 worked well for decades. Just as submitting the Measure F formula to the voters would  
18 serve to diffuse a continuing source of conflict between the parties, submitting contract  
19 interpretation disputes to a third party neutral would provide quicker solutions to conflicts,  
20 as well as reasoned decisions by mutually selected professional contract readers. During a  
21 contract cycle in which the Union is being asked to surrender significant economic  
22 enhancements, final and binding arbitration of contract interpretation grievances is an  
23 appropriate trade-off for concessions on special pays and benefit costs.  
24

25 ***There are compelling reasons for adoption of the Union's proposal 13 as modified.***

26           Letters of warning and counseling memoranda need not remain active for an  
27 indefinite period of time as a permanent stain on the employee's reputation. The purpose of  
28

1 counseling and low-level discipline is not to punish the employee for an indeterminate  
2 amount of time but rather to correct performance deficiencies. After an employee has  
3 brought performance into line with management expectations and has received no corrective  
4 action or warning letter for a two-year period, the employee deserves to be afforded a  
5 meaningful opportunity for career growth and development, i.e., an opportunity that could  
6 be denied based on stale documentation that remains in files reviewed by the employee's  
7 superiors. A two-year period is long enough to provide positive assurances to the County  
8 that an employee has chosen a new direction consistent with management expectations.  
9 Expunging low level discipline and counseling memoranda, after at two-year period with no  
10 corrective actions or warning letters, is extremely unlikely to expose the County to liability.

11 The panel recommends adoption of a more simplified version of the Union's  
12 proposal to contain the following language:

13 Counseling memoranda are to be removed from divisional files after two years  
14 during which the employee receives no subsequent counseling memorandum.

15 Documentation regarding verbal warnings or letters of warning are to be removed  
16 from personnel files after two years during which the employee receives no  
17 subsequent documented verbal warnings or letters of warning.

18 This language provides a strong incentive for employees to avoid counseling or discipline, in  
19 order to remove obstacles to career advancement, and would be of benefit to both parties.

20 ***The Catastrophic Leave Proposal was not fully vetted during bargaining.***

21 The panel recognizes that there is a fairness issue with regard to leave donations  
22 when an employees sick leave is restored pursuant to Workers' Compensation; however, it is  
23 unclear to the panel what specific tax issues would preclude an adjustment of leave balances  
24 under these circumstances. The panel therefore recommends that the parties agree to seek  
25 clarification from the auditor as to how this inequity might be corrected, whether the  
26 catastrophic leave is used or unused, without exposing the County or any party to tax  
27  
28



1 liability. Clarification of this issue would also facilitate leave donations (a practice that both  
2 parties support) in a manner that would benefit both parties.<sup>25</sup>

### 3 **CONCLUSION**

4 The panel has determined that in accordance with the statutory criteria, this  
5 recommendation supports the interests and welfare of the public and the financial ability of  
6 the public agency, addresses the long history of a base salary formula applied annually,  
7 considers both parties' proposals in light of wage comparability and the cost of living, and  
8 takes into account the overall compensation of unit employees. Additionally, the proposed  
9 settlement generates both immediate and long term cost savings while, at the same time,  
10 preserving a longstanding economic benefit (the annual base salary formula applied per  
11 contract and local ordinance), i.e., a benefit of huge significance to the Union and its  
12 members. The proposed settlement also keeps in place a benefit endorsed by current Sheriff  
13 Bell and former Sheriff Bonner and considered by Union witnesses to be an essential feature  
14 of the recruitment program. Equally significant, the proposed settlement places the most  
15 divisive issue in these negotiations in the hands of the voters, puts an end to contentious  
16 legal disputes for the duration of a five-year contract, and promotes labor peace and  
17 harmony. Finally, the adoption of final and binding arbitration of contract interpretation  
18 disputes strikes a balance between cost-saving concessions and non-economic improvements  
19 and recognizes the Union as an equal partner in the dispute resolution process.  
20

21 Based on its findings and conclusions, the panel recommends terms of settlement as  
22 set forth in this report and as summarized in Exhibit "A" to this report.  
23

24 ///

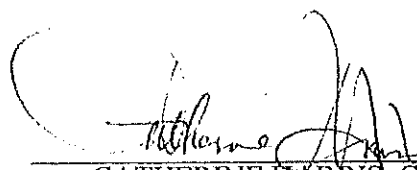
25 **SEE SIGNATURES OF MEMBERS OF THE PANEL ON NEXT PAGE**

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28 <sup>25</sup> The panel also recommends that all of the tentative agreements under Tab 26 of the Joint Exhibits be included in the successor MOU.

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Dated: 8/20/21

  
CATHERINE HARRIS, CHAIRPERSON

Dated:

JANE CHRISTENSON  
Employer Panelmember

I concur ☐  
I dissent ☐

Dated: 8/21/21

  
JASON FARNEN  
Union Panelmember

I concur ☒  
I dissent ☐

Attachment:

Exhibit "A" (Summary of Terms of Recommended Settlement)

1 essential feature of the recruitment program. Equally significant, the proposed settlement  
2 places the most divisive issue in these negotiations in the hands of the voters, puts an end to  
3 contentious legal disputes for the duration of a five-year contract, and promotes labor peace  
4 and harmony.

5 Based on its findings and conclusions, the panel recommends terms of settlement as  
6 set forth in this report and as summarized in Exhibit "A."  
7

8  
9 Dated:

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CATHERINE HARRIS, CHAIRPERSON

10  
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12 Dated: 8/12/21

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JANE CHRISTENSON  
Employer Panelmember

I concur ☐

I dissent ☒

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17 Dated: Dated:

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JASON FERRAN  
Union Panelmember

I concur ☐

I dissent ☐

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23 Attachment:

24 Exhibit "A" (Summary of Terms of Recommended Settlement)  
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**Fact-Finding Hearing with the County of Placer  
& the Placer County Deputy Sheriffs' Association  
PERB Case No. SA-IM-220-M**

Placer County Panel Member  
Jane Christenson, Assistant County Executive Officer  
Auburn, California

**Dissent and Concurrence to the Fact-Finding Report and Recommendations**

As the representative for the County of Placer (County) to the Fact-Finding Panel, I respectfully dissent & concur with the recommendations contained in the Fact-Finder's Report & Recommendations (Report), as described below. Over the past two years, the County has tried in good faith to reach an agreement with the DSA to help achieve the following three goals: (1) avoid uncontrolled cost escalation, (2) reach market alignment with its neighboring Counties; and (3) promote the County's long-term fiscal sustainability. To further these goals, the County sought a three-year agreement, in which the Placer County Deputy Sheriffs' Association ("DSA") would receive a combined **12.75% base salary increase**. This increase would represent an approximate **\$5.6 million** investment into public safety over the next three years in base salaries.

However, despite the County's good faith efforts to reach an agreement with the DSA, the parties remain at impasse in negotiations. The Report's recommendations do not adequately address the County's primary concern: the need to negotiate salaries with the DSA and to repeal the statutory salary setting formula commonly referred to as "Measure F." Primarily for this reason, I am providing the following dissent and concurrence.

**1. The County Should Bargain Salaries for DSA Members and Repeal Measure F**

Consistent with the California State Constitution, the Meyers-Milias-Brown Act, and the Placer County Charter, the County seeks to exercise its legal right to negotiate salaries with the DSA. The vast majority of public entities in California establish salary increases through this same negotiation process. Further, all other County represented bargaining units also establish their salaries increases through negotiations. Previously, it was thought that Measure F would ensure that employees compensation remain at market. However, Measure F has caused DSA employees' total compensation to be as much as **21% above the market due to the compounding effect of Measure F and other provisions of the current agreement**.

These escalating salaries have created significant fiscal challenges that require that the County take decisive steps to remedy. The County estimates that the uncontrolled costs are a direct result from Measure F and the existing agreement. The County projects that based on current trends, the unassigned General Fund Balance will be **\$-22.1 million** by 2025, and **\$-63.1 million** by 2030. If unchecked, the County would have to respond to these deficits with layoffs or cuts to public services. While the Report recommends that Measure F be submitted to the voters as a charter amendment, the County seeks to repeal the measure to remedy the County's long-term fiscal deficits and to bargain salary increases as it does with all other represented bargaining units, in keeping with the Charter authority approved by Placer voters.

## **2. The County Should Convert DSA Specialty Pays to Flat Dollar Amounts**

I generally agree with the factual findings and recommendations contained in the Report regarding converting specialty pays to flat dollar amounts. While I disagree that this alone is sufficient to address the County's projected deficits, I concur that converting the percentage-based amounts to set dollar amounts is an important step to addressing the County's looming fiscal challenges.

## **3. The Report Should Recommend the County's Proposal for Tahoe Branch Assignment Pay.**

The County provides Tahoe Branch Assignment Pay to help offset the increased cost of living in the Tahoe Basin area. The County sought to clarify that employees must live within 50 driving miles in order to qualify for the pay. During the Fact-Finding hearing, the DSA incorrectly asserted that the County's proposal was too restrictive because it limits the DSA members from receiving the incentive while living in Reno or Sparks, Nevada. However, the County directly disputed this assertion by providing a coverage map that clearly shows that both the city of Reno and Sparks are covered by the County's proposal.

The Report recommends that "Tahoe Branch Assignment Pay" be provided to employees who live beyond the cities of Reno or Sparks, which are already outside the Tahoe Basin area. Essentially the report would provide a Tahoe cost-of-living windfall to DSA member who live outside the higher cost area but would continue to receive the increase in compensation.

## **4. The County's Proposal to Clarify Current Practice Regarding Longevity Should be Adopted.**

I concur with the Report's recommendation that the County proposal 14 be adopted. This clarifying language was recommended by CalPERS during a prior audit of the Memorandum of Understanding. This is not a change in practice and will have no impact on employees.

## **5. The County's Proposals Regarding CalPERS and Health Care Contributions should be adopted.**

I concur with the Report's recommendation that the County proposals 15 and 16 be adopted. These two proposals result in immediate cost savings for the County. County Proposal 15 will require that "Classic" tier employees will pick up their full share of retirement contributions. This will result in an approximate \$155,000 of annual cost savings for the County.

Additionally, County Proposal 16 would require that the County's contributions towards health care be set at 80% of the PORAC plan. This would result in an approximate \$255,357 of annual cost savings for the County.

**6. The County's Proposals Regarding Clean up Language Regarding Vision and Dental Coverage should be adopted.**

The Parties' agreement contains outdated language that states that employees shall have coverage for specific dental and optical items. These items are already covered under the Parties' dental and vision plans. Accordingly, the County seeks to remove unnecessary and outdated language regarding vision and dental care coverage. The County is not seeking to change its current practice or coverage, so I dissent from the Report's recommendations that the obsoleted terms should remain.

**7. The County Should Not Agree to Binding Arbitration.**

I dissent from the report's recommendations regarding contractual arbitration. The county does not provide contractual arbitration for this bargaining unit or any other county bargaining unit but uses a Civil Service Commission to evaluate these types of disputes. The Civil Service Commission consists of members of the public who live and are active members of the community. I believe it is in the best interest of the county to have disputes resolved by individuals who are members of the public, rather than appointed individuals who may come from hundreds of miles and know nothing about Placer County. *It is important to note this Civil Service Commission role was affirmed by the 2019 Charter Review Committee, as well as the voters of Placer County in a November 2020 election.*

Additionally, I respectfully disagree with the recommendation that the contractual arbitration process is more streamlined or expeditious than the Civil Service Commission. Please note no evidence was presented during the hearing to indicate that the current process is unduly delayed or backlogged. This is especially notable when contrasted with the considerable delay and cost experienced to date with an outside arbitrator.

**8. The County Should Not Agree to Purge Letters of Counseling and Reprimand that are older than two years.**

I dissent from the recommendation that counseling memorandum and letters of reprimand that are older than two years should be removed from supervisory files. Letters of counseling, instruction, and reprimand are informal corrective actions taken to avoid future, and potentially more serious, misconduct. These written documents serve two important and distinct purposes: (1) they place the employee on notice of actions they need to correct; and (2) they document that the Department has taken corrective or preventative steps. Removing or limiting these documents would create serious risk of liability for the County and its taxpayers.

## **SUMMARY OF RECOMMENDED CONTRACT TERMS**

1. Base salary-adopt Union proposal with panel modifications
2. Special Pays-adopt County proposal with Union's method of calculating flat pays for Career Incentive Pays (except as provided in 3)
3. Continue status quo with respect to FTO pay and night shift differential (with addition of side letter re: interpretation of Section 8.11)
4. Continuation of status quo with regard to education incentives
5. Adopt County proposals 15 and 16 for control of benefit costs
6. Adopt 60 air miles in lieu of 50 driving miles for Tahoe Branch assignment
7. Continue status quo with regard to longevity pay rates but adopt County proposal for language change to reflect PERS regulations
8. Continuation of status quo with regard to Article 6.2 (Dental Care) and 6.10 (Vision)
9. Adopt Union proposal 13 (Personnel Files as modified by panel)
10. Adopt panel proposal to seek clarification regarding tax implications of restoring unused or catastrophic leave
11. Adopt Union proposal for final and binding arbitration of contract interpretation grievances
12. Continue status quo with regard to disciplinary appeals
13. Five-year contract
14. Adopt all tentative agreements under tab 26 of joint exhibits

**Exhibit "A"**